

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Petitioner,

v.

ERNESTINA M. SAXTON, M.D.,

Respondent.

CASE NO. 1:20-cv-01278-AWI-SKO

**ORDER VACATING JULY 18, 2022
HEARING ON MOTION FOR CIVIL
CONTEMPT**

(Doc. No. 19)

In this action, the United States brought a petition for judicial enforcement of a Drug Enforcement Administration (“DEA”) subpoena that was served on Defendant Ernestina M. Saxton, M.D. on December 7, 2018. See Doc. No. 1. The Court issued an order granting the petition on August 10, 2021, Doc. No. 15, and issued an order administratively closing the case on August 23, 2021, in the expectation that Saxton would comply with the order and on the grounds that the only dispute before the Court had been resolved. Doc. No. 17.

At one point, Saxton has two attorneys of record in this case: Derek O’Reilly-Jones of Bonne Bridges Mueller O’Keefe & Nichols, and Timothy Buchanan of McCormick Barstow Sheppard Wayte & Carruth. O’Reilly-Jones filed a motion to withdraw as counsel on February 15, 2021. Doc. No. 12. That motion was granted—and O’Reilly-Jones was terminated as counsel of record on the docket—on February 16, 2021. Doc. No. 13.

Buchanan, for his part, filed a motion to withdraw as counsel on July 29, 2021. Doc. No. 14. The United States filed a statement of non-opposition on August 18, 2021, Doc. No. 16, and the motion was denied as moot on August 24, 2021, after the petition to enforce the DEA subpoena had been granted and the case had been administratively closed. Doc. No. 18.

1 On June 6, 2022, the United States filed a motion for civil contempt (noticed for a July 18,
2 2022 hearing), asserting that Saxton has not complied with the August 10, 2021 order enforcing
3 the DEA subpoena and seeking a \$300 daily fine until she does so. Doc. Nos. 19 & 19-1 at 6:1-2.
4 The proof of service states that the motion was served on Saxton by mail on June 6, 2022 at 347
5 East Barstow Avenue, Suite 102, Fresno, California 93710. Doc. No. 19-3.

6 Finally, Buchanan filed a notice of withdrawal on June 8, 2022. Doc. No. 20. It states that
7 he and his firm withdrew from representing Saxton “on or before August 23, 2021” (when the case
8 was administratively closed), in addition to requesting removal from the ECF notification list and
9 requesting that no further papers be served on him (or his firm) in connection with the case. Doc.
10 No. 20. The proof of service states that the notice of withdrawal was served on Saxton at 2135
11 West Beechwood Avenue, Fresno, California 93711. Doc. No. 20-1. Based, it would appear, on
12 the notice, the docket now shows that Buchanan was terminated as counsel of record on June 8,
13 2022 and that Saxton is proceeding pro se. The docket does not, however, provide a service
14 address for Saxton.

15 The current state of affairs in this case is unsatisfactory. First, Buchanan and his firm have
16 not properly withdrawn as counsel, since their motion to withdraw was denied, see Doc. No. 18,
17 and the Court sees no basis for what appears to be Buchanan’s implicit assumption that
18 administrative closure automatically terminates counsel. Second, the Court does not have a reliable
19 address for service on Saxton. The address on the proof of service filed by the United States on
20 June 6, 2022, see Doc. No. 19-3, is different from the address on the proof of service filed by
21 Buchanan on June 8, 2022 (which, for what it is worth, is the address provided for Saxton in the
22 declaration supporting the withdrawal motion). See Doc. Nos. 14-2 and 20.

23 These issues must be resolved before the Court can properly address the motion for civil
24 contempt filed by the United States on June 6, 2022. Assuming Buchanan and his firm still wish to
25 withdraw, they must file a new motion to do so (or, if circumstances warrant, renew their previous
26 motion in some fashion). Given the passage of time, it is particularly important that Buchanan
27 provide a current service address for Saxton if he intends to withdraw. In the meantime, Buchanan
28 will be restored to the ECF/CM system for all purposes in this case, and he will be responsible for

1 accepting service on Saxton's behalf (and otherwise representing Saxton) at least until his motion
2 to withdraw has been decided. Also, the Court will vacate the July 18, 2022 hearing date on the
3 civil contempt motion, which can be reset in due course as described below.

4 **ORDER**

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. The July 18, 2022 hearing on the motion for civil contempt filed by the United States
7 on June 6, 2022 (Doc. No. 19) is VACATED;
- 8 2. The Clerk is respectfully DIRECTED to restore attorney Timothy Buchanan as
9 attorney of record for Defendant Ernestina M. Saxton in this case (including restoring
10 Buchanan to the ECF/CM system for notification and all purposes in this case);
- 11 3. The Clerk is further DIRECTED to serve this order on Buchanan by mail at the
12 following address:
13 Timothy J. Buchanan
14 McCormick, Barstow, Sheppard, Wayte & Carruth LLP
15 7647 North Fresno Street
Fresno, California 93720
- 16 4. Buchanan is granted 14 days from the date of this Order to file a motion to withdraw,
17 with, *inter alia*, a current service address for Saxton;
- 18 5. The United States will have seven days from the date of electronic service of any such
19 motion to file an opposition or statement of non-opposition;
- 20 6. Buchanan's reply, if any, must be filed within three days of the date of electronic
21 service of any opposition or statement of non-opposition;
- 22 7. If Buchanan files a motion to withdraw within the period specified above, the United
23 States may notice a new hearing date for its civil contempt motion once the motion to
24 withdraw has been decided;
- 25 8. Buchanan is ORDERED to continue representing Saxton for all purposes in this action
26 (including service) at least until the motion to withdraw (if any) has been decided; and
- 27 9. If Buchanan fails to file a motion to withdraw within the period specified above, he
28

1 will be deemed Saxton's counsel of record for, *inter alia*, purposes of the civil
2 contempt motion and the United States may notice a new hearing for its civil contempt
3 motion for any date consistent with the Federal Rules of Civil Procedure and the Local
4 Rules of the Eastern District of California.

5 IT IS SO ORDERED.

6 Dated: July 13, 2022

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8 SENIOR DISTRICT JUDGE